

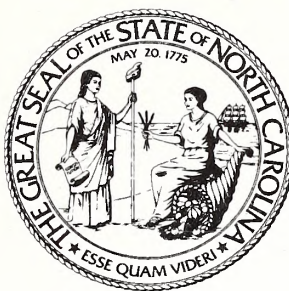
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NORTH CAROLINA MILK COMMISSION
RULES AND REGULATIONS

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NORTH CAROLINA ADMINISTRATIVE CODE
TITLE 4
DEPARTMENT OF COMMERCE
CHAPTER 7
MILK COMMISSION

Issued By

North Carolina Milk Commission
11 South Boylan Avenue
Raleigh, North Carolina 27603

NORTH CAROLINA MILK COMMISSION

11 SOUTH BOYLAN AVENUE

RALEIGH, NORTH CAROLINA 27603

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ASSISTANT EXECUTIVE SECRETARY

TELEPHONE
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July 16, 1976

TO: ALL LICENSED DISTRIBUTORS AND OTHER INTERESTED PARTIES

Enclosed is a copy of the rules and regulations of the North Carolina Milk Commission which have been published to conform with the requirements of the Administrative Procedures Act and have been codified in accordance with the format prescribed by the Attorney General.

This edition of the rules and regulations incorporate the rules of the Commission which have been designated as Milk Marketing Order Number Two and in addition include other policies and procedures which have been adopted by the Commission. This edition incorporates all the amendments to Milk Marketing Order Number Two through Amendment Number 46 which was issued to become effective June 14, 1976.

In order to conform with the Administrative Procedures Act, future changes in the rules and regulations will be issued as amendments to Title 4, Chapter 7 of the North Carolina Administrative Code (4NCAC7). With the exception of codification, the marketing regulations follow the general format of Milk Marketing Order Number Two. However, we do suggest that you familiarize yourself with the new format since it was necessary to make certain editorial changes in order to conform with prescribed procedures.

NORTH CAROLINA MILK COMMISSION

Grady Cooper, Jr.
Executive Secretary

NORTH CAROLINA ADMINISTRATIVE CODE

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DEPARTMENT OF COMMERCE

CHAPTER 7
MILK COMMISSION

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TITLE 4 DEPARTMENT OF COMMERCE

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CHAPTER 7 - MILK COMMISSION

SECTION .0100 - GENERAL PROVISIONS

.0101 PURPOSE

The purpose of the Milk Commission is to establish rules and regulations under the authority granted by G.S. 106-266.6 et seq. to maintain stability within the dairy industry in order to insure the consumers of North Carolina an adequate supply of wholesome milk.

History Note: Statutory Authority G.S. 106-266.6 et seq.;
Preamble to S.B. 263, ch. 1338, s 1 (1953);
Preamble to S.B. 643, ch. 779, s 1 (1971);
Eff. February 1, 1976.

.0102 NAME AND ADDRESS

The office of the North Carolina Milk Commission is located at 11 South Boylan Avenue, Raleigh, North Carolina 27603. The mailing address for the Milk Commission and all of its officers is 11 South Boylan Avenue, Raleigh, North Carolina 27603. The office is open to the public Monday through Friday, during the normal business hours established for state government agencies.

History Note: Statutory Authority G.S. 106-266.7(k);
Eff. February 1, 1976.

.0103 COMMISSION STAFF

The commission employs an executive secretary as chief administrator. This officer is responsible for directing the staff of the commission in order to carry out the rules, regulations, and orders adopted and promulgated by the commission, and for maintaining the records and files of the commission. The executive secretary has been granted the authority by the commission to select and employ the additional staff of the commission.

History Note: Statutory Authority G.S. 106-266.7(c);
106-266.8(7);
Eff. February 1, 1976.

.0104 CORRESPONDENCE AND COMMUNICATION

Correspondence and communications with the commission should be directed to the attention of the Executive Secretary or to the

Chairman of the North Carolina Milk Commission at 11 South Boylan Avenue, Raleigh, North Carolina 27603.

History Note: Statutory Authority G.S. 106-266.8(7);
150A-11;
Eff. February 1, 1976.

.0105 COPIES OF MILK COMMISSION LAW AND RULES

A copy of the Milk Commission Law and the rules and regulations adopted by the commission are available to the general public upon a written request to the Milk Commission office.

History Note: Statutory Authority G.S. 106-266.8(7);
150A-62;
Eff. February 1, 1976.

SECTION .0200 - ORGANIZATIONAL RULES

.0201 CHAIRMAN AND VICE CHAIRMAN

The commission shall, at the first meeting held on or after July 1 of each year, elect one of its members to serve as chairman and another of its members to serve as vice chairman through June 30 of the next following year.

History Note: Statutory Authority G.S. 106-266.7(b);
106-266.8(7);
Eff. February 1, 1976.

.0202 PARLIAMENTARY RULES

The business of the commission shall be conducted under the parliamentary rules as outlined in Robert's Rules of Order, except for any special rules or provisions that may be adopted by the commission.

History Note: Statutory Authority G.S. 106-266.8(7);
Eff. February 1, 1976.

.0203 SPECIAL PARLIAMENTARY RULE

The chairman and the vice chairman of the commission while acting in the capacity of chairman shall have the full privilege of participating as any other member and be accorded the right to make motions, debate and vote on all matters which may come before the commission.

History Note: Statutory Authority G.S. 106-266.8(7);
Eff. February 1, 1976.

.0204 PROCESS AGENT

The executive secretary of the commission is designated as the process agent for the Milk Commission. This officer has the authority to receive all legal papers and subpoenas served upon the commission in its behalf.

History Note: Statutory Authority G.S. 106-266.8(7);
1A-1, Rule 4J(4);
Eff. February 1, 1976.

.0205 SUBPOENAS, OATHS, COMPLAINTS, AFFIDAVITS

Any member of the commission, the executive secretary and assistant executive secretary may sign and issue subpoenas, take depositions, administer oaths to witnesses, sign affidavits and complaints on behalf of the commission.

History Note: Statutory Authority G.S. 106-266.8(5), (6), (7);
150A-27; 150A-33;
Eff. February 1, 1976.

.0206 MEETING SCHEDULE

The regular meetings of the Milk Commission will be held on the second and fourth Tuesdays of each month, however, the chairman may reschedule or cancel a regular meeting for sufficient reason. Special meetings of the commission may be held and scheduled under the conditions as prescribed by law.

History Note: Statutory Authority G.S. 106-266.7(j);
106-266.8(7);
Eff. February 1, 1976.

SECTION .0300 - PETITIONS, HEARINGS, EMERGENCY
RULES, DECLARATORY RULINGS,
CONTESTED CASES

.0301 PETITIONS

(a) Any person wishing to submit a petition requesting the adoption, amendment, or repeal of a rule by the Milk Commission shall address a petition to:

Executive Secretary
North Carolina Milk Commission
11 South Boylan Avenue
Raleigh, North Carolina 27603.

(b) The petition should contain the following information:

- (1) either a draft of the proposed rule or a summary of its contents,
- (2) reason for proposal,
- (3) effect of existing rules or orders,
- (4) effect of the proposed rule on existing practices,
- (5) any data supporting proposal,
- (6) list of the groups or individuals most likely to be affected by the proposed rule,
- (7) name(s) and address(es) of petitioner(s).

(c) The commission will determine within 30 days of submission or at the next meeting of the commission, after study of the facts stated in the petition, whether the public interest will be served by granting it. The commission will consider all the contents of the submitted petition, plus any additional information it deems relevant.

(d) If the decision is to deny the petition, the executive secretary will notify the petitioner in writing, stating the reasons therefor. If the decision is to grant the petition, the commission within 10 days of decision will initiate a rule-making proceeding by issuing a rule-making notice, as provided in these rules.

(e) Notice. Upon a determination to hold a rule-making proceeding, either in response to a petition or otherwise, the commission will give notice and hold the hearing in accordance with the procedure outlined in .0302 of this Section.

History Note: Statutory Authority G.S. 106-266.8(7);
150A-11; 150A-12(c); 150A-16;
Eff. February 1, 1976.

.0302 RULE-MAKING HEARINGS

In order to afford all citizens and interested parties as full an opportunity as possible to be heard in any rule-making hearing held by the commission, the following rules are adopted:

- (1) Rule-making hearings shall be conducted by the chairman of the commission or another member of the commission or by any person employed and duly authorized by the commission to act in its stead.
- (2) The time and place of any rule-making hearing shall be determined by the commission which shall give due regard to the convenience of all interested parties.
- (3) Notice of a rule-making hearing shall be made by the commission at least 10 days prior to the date such hearing is to be held. The notice shall set forth the matters to be heard and the time and place of the hearing. Notice shall be given those persons likely to be affected by any commission action arising from the hearing, and to those persons who have requested, in writing, notice of commission hearings in the particular subject area. Notice of hearing on matters of general or widespread interest shall be made by publication of the hearing notice in one or more daily newspapers of general circulation.
- (4) Rule-making hearings shall be conducted in an orderly but informal manner. The hearing officer shall admit all evidence of any type having reasonable probative value, and shall include in the evidence any relevant or material evidence which may be available to him by any records of the Milk Commission or disclosed by any investigation or study of the problem by personnel of the Milk Commission, North Carolina State University or others at the request of the commission. Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Any evidence of the type upon which responsible persons are accustomed to rely in the conduct of Milk Commission matters shall be deemed to have reasonable probative value. A hearing may be continued when such continuation is, in the judgment of the commission, warranted.
- (5) The hearings shall be open to the public and any interested person or persons may appear and be heard, either in person or by a representative, and produce oral or written evidence relevant and material to the subject matter.
- (6) Testimony of interested parties at a rule-making hearing may be required under oath or affirmation administered by the hearing officer or reporter and shall be subject to

cross-examination in accordance with procedures set forth by the hearing officer.

- (7) At all such hearings, interested parties offering direct testimony shall be accorded the opportunity to offer evidence in rebuttal in accordance with the procedures set forth by the hearing officer.
- (8) Rule-making hearings, if recorded, may be stenographically or mechanically reported and transcripts, if prepared, shall become a part of the official record of the proceeding. Transcripts of reported hearings shall be supplied to any interested party at a reasonable fee to be determined by the commission.
- (9) The North Carolina Milk Commission may make such changes in these rules and regulations from time to time as are consistent with the law and as, in its judgment, the public interest may require.
- (10) Subsequent to any rule-making hearing conducted by the North Carolina Milk Commission, and as soon thereafter as feasible, the commission shall give consideration to all the information available. Announcement of the decision of the commission shall be made public. Copies of the decision of the commission shall be mailed to all interested parties who appeared and testified at the hearing. The effective date of any decision of the commission shall be not less than 10 days after the day of the publication, announcement and mailing of said decision.

History Note: Statutory Authority G.S. 106-266.8(7);
150A-11; 150A-12;
Eff. February 1, 1976.

.0303 EMERGENCY RULES

The Milk Commission shall have the power to issue emergency rules when required by reason of imminent peril to the public health, safety and welfare. Without notice or fewer than 20 days notice after stating in writing the reasons therefor, the commission may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule which may be effective for a period of no longer than 120 days.

History Note: Statutory Authority G.S. 106-266.8(7);
150A-13;
Eff. February 1, 1976.

.0304 DECLARATORY RULINGS

(a) Any person substantially affected by a statute administered by or a rule or order of the Milk Commission may request a declaratory ruling as to (1) whether, and if so how, that statute, rule or order applies to a given factual situation or (2) whether a particular agency rule or order is valid.

(b) The commission will have the power to make such declaratory rulings. All requests for declaratory rulings shall be written and mailed to:

Executive Secretary
North Carolina Milk Commission
11 South Boylan Avenue
Raleigh, North Carolina 27603.

(c) All requests for a declaratory ruling must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule to which petition relates;
- (3) concise statement of the manner in which petitioner is aggrieved by the statute, rule or order or its potential application to him;
- (4) a statement of whether an oral hearing is desired, and, if so, the reasons for such an oral hearing.

(d) Whenever the commission believes for good cause that the issuance of a declaratory ruling is undesirable, it may refuse to do so. When good cause for refusing to issue a declaratory ruling is deemed to exist, the commission will notify the petitioner of its decision in writing, stating reasons for the denial of a declaratory ruling.

(e) Where a declaratory ruling is deemed appropriate, the commission will issue the ruling within 60 days of receipt of the petition.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedures as may be appropriate in a particular case.

History Note: Statutory Authority G.S. 106-266.8(7);
150A-17;
Eff. February 1, 1976.

.0305 CONTESTED CASES

(a) General Rule. Whenever the Milk Commission, by its official action, or by the action of the staff in its interpretation and administration of the rules adopted by the commission, acts in such a way as to affect the rights, duties, or privileges of a specified, identified party, that party, upon request, will be given an administrative hearing. Such a hearing will be held prior to final Milk Commission action on the matter,

if the action of the commission affects a right, privilege or benefit already enjoyed by the party.

(b) Request for Hearing

(1) Whenever a person believes his rights, duties or privileges have been affected by action of the commission or its staff, he may request an administrative hearing.

(2) Before a hearing request can be made, a person must first make reasonable efforts to resolve the problem with the commission informally. This requirement will be satisfied by contacting:

Executive Secretary
North Carolina Milk Commission
11 South Boylan Avenue
Raleigh, North Carolina 27603.

(3) Following such informal contact with the agency, if still dissatisfied, the person may file written request for an administrative hearing with:

Executive Secretary
North Carolina Milk Commission
11 South Boylan Avenue
Raleigh, North Carolina 27603.

Such a request must contain the following information:

- (A) name and address of petitioner,
- (B) a concise statement of the agency action being challenged,
- (C) a concise statement of the way in which the petitioner has been aggrieved,
- (D) a clear and specific demand for a hearing.

(4) Such request will be promptly acknowledged and a hearing scheduled promptly, if deemed appropriate.

(c) Place and Time of Hearing. The commission will notify the aggrieved party of the time and place of the administrative hearing. Whenever practicable, the hearing will be held in conjunction with a regular scheduled meeting of the Milk Commission.

History Note: Statutory Authority G.S. 106-266.8(7);
150A-23;
Eff. February 1, 1976.

SECTION .0400 - PERSONNEL POLICY

.0401 EMPLOYMENT POLICY

The employment policy of the Milk Commission is governed by the General Statutes of North Carolina.

History Note: Statutory Authority G.S. 106-266.8(7);
Eff. February 1, 1976.

.0402 GRIEVANCE PROCEDURE

The following procedure shall be followed in resolving employee grievances:

- (1) If an employee has a problem or grievance, it should first be discussed with his immediate supervisor. The supervisor may call higher level supervisors into the discussion if the employee agrees. Or, the supervisor may consult with higher level supervisors to seek any needed advice or counsel from his administrative superiors before giving an answer. The employee shall receive an answer within five working days, or be advised as to the conditions which prevent an answer within five working days and when an answer may be expected.
- (2) If the decision is not sufficiently satisfactory to the employee, or if he fails to receive an answer within the designated period as provided, he may request the agency's assistant executive secretary to consider the matter. The request may be presented either in person or in writing but must be presented within five working days after receipt of the first decision. Depending on the nature of the appeal, the assistant executive secretary will determine to what extent facts will be required in writing. The supervisor and employee shall provide all pertinent information to the assistant executive secretary who will review the facts and hold whatever discussions he deems desirable or the employee or supervisor may request. The assistant executive secretary shall provide a recommendation to the proper administrators or superiors within five working days after all necessary discussions are held and shall at the same time advise the employee of his recommended course of action. In the absence of objection or appeal, by either the supervisor or the employee, the agency head will expect the recommendation of the assistant executive secretary to be carried out within a reasonable period of time.
- (3) If the decision reached in (2) of this Rule is not satisfactory to the employee or the supervisor or is not

promptly implemented, the matter may be referred by the employee, the supervisor, or the assistant executive secretary to the agency head. Any request for review shall be submitted within five working days after the assistant executive secretary has presented his recommendation. The party requesting the referral shall provide a written summary of the specific facts of the complaint, copies of which shall be provided at the same time to all other parties concerned. If the employee so desires he may ask the assistant executive secretary for help in preparing the request and the written summary of facts of the appeal. A request from the employee or the supervisor for a review shall be made to the assistant executive secretary who shall transmit the request to the agency head. It will be the responsibility of the assistant executive secretary to inform the agency head of the details of the problem, the reasons why it was not resolved at lower levels, and the recommendations of the supervisor and assistant executive secretary. The agency head will make the decision for the agency within five working days, and his decision will be announced immediately by the agency head to all parties concerned. If the employee is not satisfied with the decision, he may appeal to the State Personnel Board.

- (4) If the employee is not satisfied with the decision of the agency head, he may request, within five working days of receipt of the agency decision, a public hearing by the State Personnel Board. His request should be filed through the agency personnel officer or the agency head. If the employee so desires, he may ask the agency for help in submitting his appeal in writing. The date and time for the employee's meeting with the board will be determined by the State Personnel Director. The date will be set as early as possible after the request is received from the employee. The State Personnel Director will determine the parties deemed necessary for the hearing and request their presence. The State Personnel Board, within five working days after the hearing, shall make its recommendation to the agency. After considering the board's recommendation, the agency shall make its decision and shall notify the employee in writing of the agency's decision.

History Note: Statutory Authority G.S. 106-266.8(7);
Eff. February 1, 1976.

SECTION .0500 - MARKETING REGULATIONS

.0501 DEFINITIONS

For the purpose of the marketing regulations, the following terms or words shall mean:

- (1) "Act" means Article 28B, Chapter 106 of the General Statutes of North Carolina, relating to the North Carolina Milk Commission.
- (2) "Marketing area" means the area designated by the commission, including all the territory within the counties designated for the area.
- (3) "Classification" means the classifying of milk and fluid milk products into classes according to utilization for a designated delivery period.
- (4) "Delivery period" means the calendar month or approved accounting period.
- (5) "Breed milk" means milk produced by a herd of registered cattle and/or grade cattle of a specified nationally recognized breed, which is labeled, advertised and sold by a distributor as breed milk for a premium price of not less than one cent (1¢) per quart.
- (6) "Base" for a producer means the average deliveries of a producer for a designated period that is established on an equitable basis with all other producers, for allocating classes of milk.
- (7) The following terms as defined in Article 28B, Chapter 106-266.6 of the General Statutes of North Carolina shall apply: "Affiliate", "Books and Records", "Commission", "Distributor", "Health Authorities", "Licensee", "Market", "Milk", "Person", "Producer", "Sanitary", "Subdistributor", "Subsidiary".
- (8) "Milk." For the purpose of classification, wherever the word "milk" is used, it shall be construed to include all whole milk, cream, chocolate milk, plain buttermilk, creamed buttermilk, skim milk, special or premium milk, flavored milk or drinks, concentrated milk, sterile milk, dietary modified milk, milk shake mix, half and half, eggnog and other milk-cream mixtures, regardless of grade or fat content and:
 - (a) "Lowfat Fresh White Milk." Lowfat fresh white milk is fresh milk from which a sufficient portion of milkfat has been removed to reduce its milkfat content to not less than 0.50 percent and not more than 2.0 percent.
 - (b) "Lowfat White Reconstituted or Recombined Milk." Lowfat white reconstituted or recombined milk shall mean milk which is a result of the mixing of milk

solids and water with any of, or combination of; fresh whole milk, fresh skim milk, milkfat, which results in a product containing not less than 0.50 percent and not more than 2.0 percent milkfat.

- (c) "Lowfat Flavored Fresh Milk." Lowfat flavored fresh milk is fresh milk from which a sufficient portion of milkfat has been removed to reduce its milkfat content to not less than 0.50 percent and not more than 2.0 percent and to which has been added a flavor or sweetener.
- (d) "Lowfat Flavored Reconstituted or Recombined Milk." Lowfat flavored reconstituted or recombined milk shall mean milk which is a result of the mixing of milk solids and water to which has been added a flavor or sweetener with any of, or combination of; fresh whole milk, fresh skim milk, milkfat, which results in a flavored or sweetened product containing not less than 0.50 percent and not more than 2.0 percent milkfat.

History Note: Filed as an Emergency Regulation Eff. June 14, 1976, for a Period of 90 Days;
Statutory Authority G.S. 106-266.6;
106-266.8(7);
Eff. February 1, 1976.

.0502 MARKET AREAS

The natural milk market areas of the state are defined as follows:

- (1) Area I
Alamance, Caswell, Guilford, Randolph and Rockingham Counties.
- (2) Area II
Davie, Davidson, Forsyth, Stokes and Rowan Counties, except that part of Rowan County that is included in Area III as described in Subsection (3) of this Rule.
- (3) Area III
Anson, Cabarrus, Mecklenburg, Montgomery, Stanly, Richmond and Union Counties, and that part of Rowan County located south of Highway 52 between the Cabarrus-Rowan County line and the junction of Highways 52 and 152 and south of Highway 152 from said junction to the Iredell County line. The northern boundary of Area III as herein described shall include the establishments located on Highway 52 and 152 and the entire corporate limits of the Towns of Gold Hill, Rockwell and China Grove located on this established line.
- (4) Area IV
Bladen, Brunswick, Carteret, Columbus, Craven, Duplin, Jones, New Hanover, Onslow, Pamlico, Pender and Sampson Counties.
- (5) Area V
Chatham, Durham, Franklin, Granville, Harnett, Johnston, Lee, Moore, Orange, Person, Vance, Wake and Warren Counties.
- (6) Area VI
Cumberland, Hoke, Robeson and Scotland Counties.
- (7) Area VII
Alexander, Burke, Catawba, Caldwell, Cleveland, Gaston, Iredell, Lincoln, McDowell, Polk and Rutherford Counties.
- (8) Area VIII
Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, Mitchell, Swain, Transylvania and Yancey Counties.
- (9) Area IX
Beaufort, Bertie, Camden, Chowan, Currituck, Dare, Edgecombe, Gates, Greene, Halifax, Hertford, Hyde, Lenoir, Martin, Nash, Northampton, Pasquotank, Perquimans, Pitt, Tyrrell, Wayne, Washington and Wilson Counties.
- (10) Area X
Avery, Ashe, Alleghany, Surry, Watauga, Wilkes, and Yadkin Counties.

History Note: Statutory Authority G.S. 106-266.8(7), (13);
Eff. February 1, 1976.

.0503 DISTRIBUTOR LICENSES

(a) No distributor, subdistributor or any other person shall sell or offer for sale or otherwise distribute milk in any county located in any marketing area until a license has been obtained from the Milk Commission.

(b) The principal distributor or processing plant shall be charged with the responsibility of obtaining a license for his plant and his subdistributor before beginning distribution of milk in any county of a controlled area.

(c) A new applicant for a distributor or subdistributor license shall make application and receive a license before handling, distributing, or offering for sale milk and/or milk products in fluid form for fluid consumption or use in any county of any marketing area.

(d) The commission may decline to grant a license to a new applicant or a now existing distributor or may suspend or revoke a license already granted, upon due notice to the licensee or applicant and after a hearing in accordance with the authority granted the commission by Article 28B, Chapter 106, of the General Statutes.

(e) The Milk Commission shall give at least 10 days notice to the licensee or applicant and state the reason for the hearing before refusing to grant a license or suspending or revoking a license already granted.

(f) The following procedure will be used by the commission when considering a request from a new applicant or for additional territory from an existing distributor:

- (1) At least 10 days prior to consideration of an application for license by the commission, all distributors licensed to distribute milk in the county or marketing area shall be notified of the application and given an opportunity to file a statement regarding the application.
- (2) The applicant or his representative shall be given an opportunity to file statements or appear before the commission in support of his application.
- (3) On the basis of information presented to the commission by licensed distributors, by the applicant or by the commission staff, the commission may approve the license or may postpone action on the application pending a hearing. At this hearing, interested parties shall be given an opportunity to show cause why the license should not be granted.
- (4) Licenses approved by the commission shall be issued to become effective on a date set by the commission; however, the effective date shall be at least 10 days following the date of final approval.

(g) Licenses issued to distributors located in other states shall be issued subject to their agreeing to follow the policies of the commission which are applicable to distributors located in North Carolina.

History Note: Statutory Authority G.S. 106-266.8(7), (11);
106-266.9; 106-266.10;
Eff. February 1, 1976.

.0504 CLASSIFICATION OF MILK

(a) Class I. Class I shall include the product weight of all fluid milk, fluid milk products, (including products sweetened or flavored), all skim milk and butterfat which is sold or disposed of for consumption or use as processed fluid milk products under any trade name (regardless of grade), except milk shake mix, heavy cream, medium cream, half and half, one-half ounce coffee creamers, eggnog, and any other cream items which are classified in a lower class and military sales approved for Class IA. The following provisions are also applicable to Class I:

- (1) Class I includes, but is not limited to, the following type milk products; pasteurized milk, homogenized milk, raw milk, whole lactic milk, buttermilk, plain and flake buttermilk, lowfat flavored fresh milk, lowfat flavored reconstituted or recombined milk, lowfat white reconstituted or recombined milk, skim milk, fortified skim milk with added solids, chocolate or flavored milks or milk drinks, dietary modified milk, sterile milk, reconstituted milk and concentrated milk.
- (2) Class I shall also include any volume of fluid loss or shrinkage in excess of three percent of each month's reconciliation as computed in accordance with .0506(e) of this Section. Any excessive loss computed which is to be paid as Class I to producers shall be paid in the producer payroll for the month following the month in which such loss occurred.
- (3) All fluid milk sold to military installations shall be classified as Class I except for such classification and class prices for specified periods as may be approved by the Milk Commission.

(b) Class IA. Class IA shall include all bulk milk sold to other distributors or transferred between branches or plants of the same company for fluid use as defined in .0504(a) of this Rule including transfers for military usage for which a different producer price may apply. Also, Class IA shall include the sales of milk made directly to military installations for which a producer price different from the Class I price may apply.

(c) Class IB may include all fresh skim milk and fresh milkfat which is sold or disposed of for consumption as lowfat fresh white milk as defined in these regulations.

(d) Class II. Class II includes all milk received and not accounted for in Class I and Class IA, including plant loss or shrinkage volume not in excess of three percent of the total weight to account for as determined by the provisions of .0506(e) (1) of this Section. Class II utilization must be supported by complete and accurate records being maintained by the distributor which will account for the disposition and use of

all milk and milk products received including the allowable shrinkage or plant loss.

History Note: Filed as an Emergency Regulation Eff. June 14, 1976, for a Period of 90 Days;
Statutory Authority G.S. 106-266.8(3), (7), (10);
Eff. February 1, 1976.

.0505 RULES OF CLASSIFICATION

(a) Base Holding Producers. Milk supplied by base holding producers shall at all times be included in the highest paid classification before milk received from other handlers and other sources is classified.

(b) Use of Other Source Milk. No Class I or Class IA milk shall be purchased, received, handled, or obtained from any source other than from approved producers or other North Carolina licensed distributors, without the express permission of the Milk Commission, except where it can be established by the distributor that approved milk is not available.

(c) Sale and Transfer of Bulk Milk

- (1) On the sale or transfer of bulk milk, the selling distributor shall pay producers the class-use prices. Not less than one-half of any amount received above class-use prices shall be paid to the producers of the selling distributor.
- (2) A handling allowance may be deducted on the sale or transfer of bulk milk diverted directly from farm routes but such allowance shall not exceed fifteen cents (15¢) per hundredweight. On milk received in the plant and reloaded for sale or transfer, a handling allowance may be deducted but such allowance shall not exceed twenty-five cents (25¢) per hundredweight. Such allowance shall be applicable only to milk sold or transferred for Class I or military usage. Further, no handling or receiving allowances shall be applicable to any portion of a bulk transfer which is classified as Class II under this provision.
- (3) Only the actual additional transportation costs may be applied to the sale, transfer or diversion of bulk milk. In computing the necessary additional transportation, a distributor must take into consideration the mileage of a diverted farm route and the hauling already paid by producers in arriving at the additional transportation costs which may be applied.
- (4) On the shipments of milk from a North Carolina producer pool to a plant located outside the State of North Carolina, the selling distributor shall classify as Class I all such shipments except when the shipping distributor obtains from the out-of-state purchaser a certification as to the actual use and disposition of such milk and when such certification is filed with the Milk Commission monthly report.
- (5) On the receipt of bulk milk from another distributor or branch plant, the purchaser shall furnish to the seller

a record by classes as to the use of the milk. Such record shall be furnished to the seller by the purchaser not later than the eighth day of the following month.

(d) Sale or Transfer of Bottled or Cartoned Milk. Sales or transfers of bottled or cartoned milk to other distributors shall be accounted for and classified as Class I and allocated to producer milk by the bottling distributor, except as such sales are offset by purchases or transfers of producer milk from other distributors for which Class I prices were paid to North Carolina producers; but the receiving distributor shall classify as Class I all or any part of the sales of bottled or cartoned milk received that is not classified as Class I to producers of the bottling distributor or other North Carolina producers. No handling or transportation charges shall be deducted from producer payment on any transfer of bulk, bottled or cartoned milk transferred in accordance with the provisions of this Subsection.

(e) Unusual Loss of Milk. When an unusual loss in bulk, processed, or packaged milk is experienced from an act or condition over which the distributor has no control, the Milk Commission will consider administrative relief if such request is made as soon as possible by telephone to the commission office, and such telephone call is immediately confirmed by a written certification from such distributor. The written certification must be submitted jointly by the plant superintendent and the highest other executive of the plant where the loss occurred. On any such request, if approved, a written waiver will be furnished to the distributor and such waiver must be attached to the report for the month in which such loss occurred. Upon receipt of a waiver, a distributor must maintain all related records for audit examination.

(f) Reclassification of Inventory. When producer or other source milk on hand in inventory at the end of a month is later utilized in a higher class, an adjustment shall be made to reclassify the volume of milk utilized in the higher class and payment made to producers or other sources based upon the reclassification. This provision shall apply when the Class I and IA sales of a plant exceed the Class I and IA payments to producers and other sources; and when it is determined that the excess Class I and IA sales over receipts were derived from inventory.

History Note: Statutory Authority G.S. 106-266.8(3),
(7), (10);
Eff. February 1, 1976;
Amended Eff. May 18, 1976.

.0506 COMPUTATION OF MILK IN EACH CLASS

(a) All distributors in the marketing area shall compute the total pounds of milk in each class and apply to regular producer deliveries (including distributor-owned herds) for each delivery period. All classified settlements with producers under the base plan shall be made in accordance with the uniform method of allocating classes of milk to producers which is as follows:

<u>Producer</u>	<u>Base</u>	<u>Delivered</u>	<u>Class I</u>	<u>Class IA</u>	<u>Class II</u>
1	15,000	18,000	15,536	1,071	1,393
2	8,000	9,000	8,286	572	142
3	5,000	6,000	5,178	357	465
4	5,000	3,000	3,000	-	-
	33,000	36,000	32,000	2,000	2,000
	(28,000)		(29,000)		
			96.97%		
			103.57%		

To obtain the Class I usage percent, divide total Class I sales by total base.

Example:

$$32,000 \div 33,000 = 96.97\%$$

This percent should be applied to each producer's base; however, we find that producer #4 did not deliver 96.97% of his base... (4,848 pounds) which he is entitled to in Class I. Therefore, producer #4 is given all of his milk at Class I and a new percentage must be obtained so that the 1,848 pounds (4,848 - 3,000 = 1,848) of Class I milk may be divided between the other producers. This is obtained by subtracting the pounds #4 is given in Class I from the total Class I sales. The base of #4 is subtracted from the total bases (Example: 33,000 - 5,000 = 28,000).

A new percentage is obtained by dividing the new Class I total by the new base total (Example: 29,000 \div 28,000 = 103.57%). This percent will then apply to each producer's base (except those eliminated, as was producer #4).

The quantity obtained for each producer will then be his Class I milk and the total of all will account for the total Class I sales. Example:

1	15,000 x 103.57% = 15,536 pounds
2	8,000 x 103.57% = 8,286 pounds
3	5,000 x 103.57% = 5,178 pounds
4	5,000 x determined 3,000 pounds

Total Class I 32,000 pounds

Class IA sales or use is applied to producer's bases by the same procedure; that is, divide the last aggregate bases obtained for Class I into the total Class IA sales or use (Example: $2,000 \div 28,000 = 7.14\%$). Each producer's base is multiplied by this percent to obtain his quantity of Class IA milk except those eliminated as was producer #4.

1	15,000 x 7.14% = 1,071 pounds
2	8,000 x 7.14% = 572 pounds
3	5,000 x 7.14% = 357 pounds
4	-
	Total Class IA <u>2,000</u> pounds

The Class II milk is determined by subtracting the Class I and Class IA milk from the total deliveries of each producer.

(b) To compute the weight of product pounds to be classified in each class, multiply the respective units by the proper weight factor determined on the basis of the following weights per quart:

<u>Product</u>	<u>Weight Per Quart</u>	<u>Product</u>	<u>Weight Per Quart</u>
Milk	2.15	Cream (10-17%)	2.13
Creamed Buttermilk (whole)	2.15	Cream (18-21%)	2.11
Flavored Milk or Milk Drink (net)	2.00	Cream (29-32%)	2.09
Skim Milk	2.16	Cream (33-39%)	2.08
Buttermilk	2.16	Cream (40-42%)	2.06

To compute the product pounds of eggnog, sour cream dips, and milk shake mix, multiply the units by the respective weight for each product; provided, however, the weight of any non-milk ingredient solids may be deducted from the total weight of the computed product pounds to arrive at the pounds to be classified to producers.

(c) The total pounds of breed milk sold by each distributor may be allocated in a uniform manner to producers of breed milk (including distributor-owned herds) and the remaining amount of milk delivered by breed producers (if any) shall be classified in Class II of the regular pool. If breed milk sales are classified in the regular pool, the minimum premium of twenty cents (20¢) per hundredweight for breed milk sales should be prorated to breed producers as a percentage of their established base.

(d) In the months of July and January of each year, qualified breed producers may select the breed milk pool or the regular pool in which they will participate for the following six-month period beginning August 1 and February 1. (No changes will be permitted between pools for breed producers except in the months

of August and February as provided in this Paragraph.) A copy of the agreement must be filed with the plant and Milk Commission and such agreement shall be in writing and signed by each breed producer affected.

(e) To compute the plant loss or shrinkage for each month or accounting period, the following procedure shall be followed:

- (1) Add the weight of all milk and cream products containing butterfat or milk solids in any form received from producers or other sources, and the weight for any volume of milk reconstituted.

Deduct from the resulting total weight computed in accordance with the above, the weight of any cream, powder or condense received which is transferred directly for use in the manufacture of by-products such as ice cream and cottage cheese to determine a sub-total -- Net receipts to account for.

Add to this sub-total the beginning bulk and package inventories to determine the total weight of the milk and milk products to account for.

- (2) Add the weight of all milk, cream, and milk products containing butterfat and skim milk ingredients used and disposed of in the following manner:

Packaged and bulk sales and transfers (do not include animal feed sales); ending inventories; milk solids in reconstitution; the weight of any unusual loss which is allowable as provided for in .0505(e) of this Section; transfers to the manufacturing of by-products such as ice cream and cottage cheese less the weight of ingredients deducted in accordance with (e)(1) of this Rule, which were purchased for direct use in manufacturing by-products. The transfer weights to manufacturing must be supported by complete and adequate records. Such manufacturing records must be made available for inspection and audit purposes.

- (3) Determine the allowable loss or shrinkage by multiplying the total weight of the milk and milk products to account for in (e)(1) of this Rule, by three percent.
- (4) Determine the actual loss or shrinkage or gain by subtracting the total weights accounted for in (e)(2) of this Rule from the total weight to account for in (e)(1) of this Rule.
- (5) When the actual loss or shrinkage exceeds the three percent amount determined in (e)(3) of this Rule, the excess loss or shrinkage must be added to Class I to producers, except that the excess loss or shrinkage may be prorated based on the source of net receipts as

computed in the net sub-total in (e)(1) of this Rule. When the net receipts to account for in (e)(1) of this Rule include receipts of ingredients from sources other than producers or from reconstitution, determine the percent that producer receipts are to the sub-total - Net receipts to account for. Apply this percent to any excessive loss or shrinkage to determine the weight adjustment to be added to Class I. Such adjustment shall be paid in the producer payroll for the month following the month in which such loss occurs, provided however, if enough Class II milk is not available then the amount not adjusted shall be paid in the next subsequent month or months until the full adjustment is paid.

History Note: Statutory Authority G.S. 106-266.8(3), (7), (10);
Eff. February 1, 1976.

.0507 MINIMUM CLASS PRICES AND BUTTERFAT DIFFERENTIALS

(a) **Class I Price.** The price to be paid producers for the product pounds classified as Class I shall be eleven dollars and twelve cents (\$11.12) for milk containing three and one-half percent butterfat for all milk processed in a North Carolina plant regardless of where sold; provided, however, the price to be paid producers for milk sold in areas outside of the state shall be the prevailing price that producers are being paid in the areas in which the milk is sold.

The prevailing prices in effect in the areas into which milk is sold by North Carolina processors shall be determined and such prices announced by the commission office.

(b) **Class IA Price.** The price to be paid producers for the product pounds classified as Class IA shall be the weighted average price on a three and one-half percent butterfat basis for sales or transfers of milk computed in accordance with the provisions as outlined in .0505(c) of this Section. Also, the prices computed in accordance with the following provisions may apply:

- (1) On the sale of milk to plants outside of the state, the Class I price shall be the announced prevailing Class I price paid to producers in the areas in which the milk is sold and this shall be the price to which the applicable handling or hauling charges may apply.
- (2) For the milk used to supply general issue and commissary contracts for military installations, the Class IA price shall not be less than the price announced for a specified period in accordance with the following provisions:

- (A) The executive secretary is authorized to announce the minimum prices to be paid producers for milk used to supply general issue and commissary contracts for military installations. The prices announced shall be applicable to the bids made during the specified period and remain in effect for the duration of the contract.
- (B) The executive secretary is authorized to announce minimum prices to be paid producers for milk shipped to plants located in other states which is certified as being used to supply general issue and commissary contracts for military installations.

(c) **Class IB Milk.** The minimum price to be paid producers for the product pounds classified in this class in the designated marketing areas shall be as follows:

- (1) Milk Marketing Areas I, II, III, IV, V, VI, IX and X -- eleven dollars and twelve cents (\$11.12) per cwt for milk containing three and one-half percent butterfat;
- (2) Milk Marketing Areas VII AND VIII -- ten dollars and twelve cents (\$10.12) per cwt for milk containing three and one-half percent butterfat.

(d) The price to be paid producers for the product pounds classified as Class II shall be a weighted average price per hundredweight of the prices which are computed in accordance with the following provisions:

- (1) The price to be applied for the product pounds of bulk milk sold as Class II to another Grade A fluid milk plant shall be the price received. However, the selling plant may make such deduction as provided for in .0505(c)(1)(3) of this Section but in no case shall the resulting price be less than the Class II price announced monthly by the Milk Commission.
- (2) The price to be applied to the product pounds of bulk milk sold to a company operating a non-grade A plant (hereinafter referred to as a manufacturing plant) for the manufacturing of by-products only, shall be the price received; provided, a maximum receiving and handling allowance of ten cents (10¢) per hundredweight may be deducted when such milk is actually received in the plant of the shipper. No receiving or handling allowance shall be deducted from the price received on sales to a manufacturing plant when such milk is diverted directly from farm routes to a manufacturing plant. Further, no receiving or handling allowance shall be permitted on the sale or transfer of Class II milk between plants of the same company. Further, on the sale or transfer of milk to a manufacturing plant the actual additional transportation costs may be applied to such sales. However, in computing the necessary additional transportation, a distributor must take into consideration the mileage of a diverted farm route and the hauling already paid by producers in arriving at the additional transportation costs which may be applied.

On shipments of milk from a North Carolina producer pool to a plant located outside the State of North Carolina, the selling distributor shall classify as Class I all such shipments except when the shipping distributor obtains from the out-of-state purchaser a certification as to the actual use and disposition of such milk and when such certification is filed with the Milk Commission monthly report.

- (3) The price to be applied for the remaining product pounds in Class II shall be the three and one-half percent price determined by computing the simple average of the Minnesota-Wisconsin price series for manufacturing milk and a butter-powder price series determined in accordance with the procedure specified in this Subsection.
- (A) The price to be used for the Minnesota-Wisconsin price series shall be the three and one-half percent price announced by the United States Department of Agriculture, Statistical Reporting Service, Crop Reporting Board, for the average price received by farmers for manufacturing milk in the Minnesota-Wisconsin area for the previous calendar month.
- (B) The price to be used for the butter-powder price series shall be determined in accordance with the following procedure:
- (i) Multiply by 4.2 the average of the Chicago butter price for Grade A (92 score) bulk creamery butter as reported by the United States Department of Agriculture in the previous month, using the mid-point of any range as one price.
 - (ii) Multiply by 8.2 the weighted average price per pound for carload lots of non-fat dry milk solids (spray process), for human consumption f.o.b. manufacturing plants in the Chicago area, as published by the United States Department of Agriculture for the monthly period ending on the 25th of the preceding month.
 - (iii) From the sum of the result of Paragraphs (i) and (ii) of this Subsection deduct a differential of seventy-three cents (\$0.73). (This differential shall be adjusted in June of each year based upon the annual percent of change in the Wholesale Price Index as computed and published by the United States Department of Labor for March.)
- (C) Compute a simple average of the Minnesota-Wisconsin price series and the butter-powder price series rounded to the nearest cent (.005 shall be rounded to the next full cent), based upon the information from the sources specified and in accordance with the procedure outlined. The three and one-half percent price thus computed shall be

announced by the 15th of the month and shall apply to deliveries made during the next succeeding month or accounting period.

(e) Butterfat Differentials. For Class I, Class IA, and Class II milk, each distributor shall pay producers the minimum butterfat differential per hundredweight as announced by the commission on or about the fifth of the month to apply to all deliveries made during that month or accounting period. The minimum differential for each month or accounting period shall be determined by multiplying the average Chicago 92 score butter price for the previous month, as reported by the U.S. Department of Agriculture, Crop Reporting Board, by 0.10 and rounded to the nearest one-tenth cent (\$0.001) (0.0005 shall be rounded to the next one-tenth cent).

In making payments to each producer, a distributor shall add the minimum of the applicable butterfat differential per hundredweight for each one-tenth of one percent that each producer's milk is above three and one-half percent butterfat and shall not deduct more than the minimum of the applicable butterfat differential per hundredweight for each one-tenth of one percent that each producer's milk is below three and one-half percent butterfat.

(f) Premium for Breed Milk Sales. Each distributor shall pay breed producers a minimum of twenty cents (20¢) per hundredweight for all breed milk (sold by the distributor as breed milk at a premium price) in addition to the established Class I price.

(g) Minimum Price to be Paid the Distributor for Class IA. The minimum prices to be paid by the purchasing distributor to other distributors for Class IA milk shall not be less than the class-use minimum producer prices established for the marketing area in which the purchasing distributor is located.

(h) Minimum Price for Milk Sold in Established Marketing Area. Each distributor located in an uncontrolled area, who distributes milk in other established marketing areas, shall pay producers not less than the minimum producer price established for that part of his total sales that are sold in other established marketing areas.

History Note: Filed as an Emergency Regulation Eff. June 14, 1976, for a Period of 90 Days;
Statutory Authority G.S. 106-266.8(7), (10);
Eff. February 1, 1976;
Amended Eff. June 1, 1976; May 1, 1976.

.0508 METHOD OF SETTLEMENT

(a) Final Settlement. Each distributor in the marketing area shall make full and complete payment to producers on or before the 15th day following the close of each calendar month or approved accounting period at not less than the minimum class prices as specified in .0507 of this Section.

(b) Partial Payments. Upon request, a partial payment shall be paid to a producer not later than the last day of the delivery period for milk received during the first half of such delivery period. A producer's request for a partial payment shall be honored for an amount up to 40 percent of his previous month's net utilization value computed to the nearest one hundred dollars (\$100.00); provided, a sufficient volume of milk has been delivered for the first half of the month or pay period to justify such payment. Further, in determining the amount of the partial payment to be made, the distributor may take into account assignments and such other deductions as are authorized by the producer.

A producer may request that a partial payment be made on a regular basis or may request a single or limited number of partial payments. In addition to the procedure outlined, a distributor may make partial payments to a producer at such time or times and in such amounts as may be agreed upon between the two parties.

(c) Each distributor shall make such deductions from funds owed to a producer as authorized by the producer.

(d) Each distributor shall make the necessary adjustments to correct any error in classification or payments to producers for past delivery periods.

(e) Statement to Producers. Each distributor shall furnish to each producer or association of producers for each delivery period a statement in writing which may be retained by the producer, showing the following:

- (1) the identity of the distributor,
- (2) the delivery period,
- (3) producer base for period,
- (4) butterfat test,
- (5) pounds of milk in each class,
- (6) class prices,
- (7) gross amount for each class,
- (8) each deduction made by the distributor,
- (9) net amount paid.

History Note: Statutory Authority G.S. 106-266.8(7);
106-266.12;
Eff. February 1, 1976.

.0509 FINANCIAL RESPONSIBILITY FOR MILK RECEIVED BY BULK TANKER

A licensed milk distributor shall be financially responsible, as determined by such distributor's monthly utilization, for each producer's milk received from a farm bulk tank by the distributor or its agent or employee. In the absence of a written contract or agreement between the hauler and the producer (copy of which must be on file with the commission), a contract hauler or an independent hauler shall be deemed to be the agent of the distributor; provided, that any distributor, within 20 days after the promulgation of this Regulation (or within 10 days after any contract is hereafter made with a hauler), may petition the commission for a hearing to determine whether the hauler is in fact the agent of the distributor. Nothing herein contained shall prevent the distributor from requiring the hauler (1) to obtain insurance, (2) to post bond, or (3) to agree to save the distributor harmless from any loss in connection with the handling of said milk; but no such agreement shall relieve the distributor from its liability to the producer in the event the hauler or his insurer fails to pay the producer for said loss.

Where milk is received from a producer's farm tank and transported to market by a producer cooperative association which is not a licensed milk distributor, the association shall be financially responsible to the producer for said milk until the milk is received by a licensed milk distributor.

History Note: Statutory Authority G.S. 106-266.8(3), (7);
Eff. February 1, 1976.

.0510 ESTABLISHMENT OF PRODUCER'S BASES

(a) Producer bases shall be established each year in accordance with the following rules:

- (1) **Base Building Period.** The base building period shall be September through December each year, except for any group of producers for whom a different base building period has been approved by the Milk Commission. The commission will, however, give consideration to a different base building period proposed by any group of producers provided such request is received by the commission at least 10 months prior to the effective date of such proposed period.
- (2) **Determination of Average Daily Bases.** To compute the average daily bases, divide the total pounds of milk received by a distributor from each producer for the base forming periods in effect by the number of days (from the first day of delivery during such base building period to the last day inclusive) but not less than 91 days. This 91-day requirement does not apply to a new producer establishing a base under the provisions set forth for new producers but applies only to established base holding producers who are off the market for a period of time during the base building period.

The base for a producer who delivers on an every other day delivery schedule shall be computed by using the total number of days in the period calculated from the first day of delivery of such producer but not less than 91 days.
- (3) **Determination of 1963 Base and Establishing Use of Three-year Average.** Effective January 1, 1963, and effective on January 1 for subsequent years, the average daily base for each producer shall be the simple average of the daily bases which were earned or acquired (including the base established by a herd during such period and acquired subsequent thereto) for the three base building periods immediately preceding.
- (4) **Exception.** This method of establishing bases shall apply uniformly to all producers except such groups of producers for which a special base plan or method of establishing bases has been approved by the commission.
- (5) **Transfer of Established Bases between Plants.** A producer transferring from one plant to another shall have the right to transfer the base currently in effect for his herd although the base building periods may vary between the two plants. Immediately upon transfer, the base building period in effect for the

plant to which a producer transfers shall be the base building period for such producer.

- (6) Filing of Bases with Commission and Notice to Individual Producers. On or before the 25th day of the month following the end of the base building period each year, every distributor shall file with the Milk Commission a complete record of the name and address of each producer and the base established in accordance with the provisions as outlined. At the time of the first payment under the new base, or prior thereto, each distributor shall notify each producer of the daily base established.

(b) Establishment of a Base for a New Producer. The establishment of a base for a new producer who enters or has entered the market after June 1, 1961, shall be calculated under the following plan:

First Month	No Base
Second Month	25% of first month deliveries
Third Month	50% of first and second month deliveries
Fourth Month	75% of first, second and third month deliveries
Fifth Month	100% of first four months deliveries

A daily average shall be computed by dividing the deliveries by the number of days in the period. Apply to this computed daily base the above percent which is applicable in order to arrive at the daily base which will apply for a particular month. Provided, however, a base established in accordance with the above plan shall not exceed 3,000 pounds per day for producers who commence building base under this Rule after June 7, 1976.

The base established for a new producer under this Rule, shall be considered the base for such producer until he has made further deliveries under the following circumstances:

- (1) For a producer establishing base under the three year moving average, the base built under the new producer rule shall be considered the first year history. After making this computation, if a producer delivers 91 days or more during the regular base building period the deliveries thus made shall be used to compute a second year history which will be averaged with the history established for the first year and such base shall remain in effect until the producer has delivered through a full base making period. After a producer has delivered through the next full base making period, the deliveries shall be used to determine the third year history which will be averaged with the prior two histories to determine the next base for such producer.

- (2) All subsequent bases shall be computed in accordance with the provisions in effect for all other producers. For a producer shipping to a plant under a special base plan, the base computed under the new producer provision shall be considered the first year history for such producer and shall remain in effect until such producer ships 91 days or more during a regular base building period, after having made the computation for the first base. The next base for a producer under a special base plan shall be determined in accordance with the provisions of such plan.

To qualify to build base under this provision, a producer must petition the commission in writing at least 30 days prior to the date he desires to commence building base and provide information which will show that such producer has not been a base holder or active pool participant on any market for a period of 36 months and that such producer during this 36 month period had less than one percent ownership, either directly or indirectly, nor has been an officer or director of a corporation, nor has had a debtor or creditor relationship in any other dairy operation and must further certify that the proposed new operation is not in cooperation with a previous base holder who could not certify to the same circumstances and is not in anyway tied to a present Grade A dairy operation.

Should it be determined that a producer knowingly furnished incorrect or fraudulent information in order to obtain approval to build base, then the commission after review may revoke the base established under this provision and disqualify such producer from holding base under this Rule.

After a producer has been approved to build base under this provision, a producer shall have the option of designating the first full month his shipments are to be considered for base building purposes.

Should a producer who is building base under the new producer rule purchase base, the base earned under the new producer rule at the time such base is purchased shall be computed and become the base earned under the new producer rule to which the purchased base may be combined. The portion of the base earned shall be subject to the 36 month limitation as specified in (e) (4) of this Rule.

- (c) Use of Base Plan or Exceptions. The producer base plan as defined in this Rule shall be used by all distributors and producer groups in established marketing areas except where

approval has been granted by the Milk Commission after formal request by producers or a producer group to establish and use a different base plan or a fall premium plan. (An application for use of a different base plan or the fall premium plan must include a complete copy of the plan agreed upon by the producers or producer groups.)

(d) Application of Producer Bases. The following rules shall apply to the base established for each producer for all base plans:

- (1) Use of Average Daily Base for Payment Purposes. All plants shall use the daily average in effect for individual producers, multiplying this average times the number of days in a monthly payment period to determine the base to be used for each producer for the allocation of classes during such payment period.
- (2) Adjustment of Base during Payment Period. When a producer is off the market during a period, the base for such producer shall be reduced by the number of days such producer is off the market in order to determine the base which will be used for this producer for such payment period.
- (3) A producer who has established a base in any marketing area in accordance with the foregoing paragraphs of this Rule shall have the right to retain such base when his daily deliveries of milk are transferred to another distributor within any marketing area. A producer who transfers from one distributor to another distributor during a base forming period shall have his base computed from his total deliveries to both, or all, receiving distributors.
- (4) A producer who has established a base in any marketing area shall be entitled to continue to ship all his milk to the milk distributor where such base is established; provided, that the total milk production, less that retained for family use, is delivered regularly and meets the requirements of the local and state laws and regulations.
- (5) Bases established each year shall be used for allocating classes of milk until new bases become effective.

(e) Transfer of Bases between Producers and Loss of Base. A base shall be applied only to deliveries of milk by the producer for whose account milk was delivered during the base-forming period, except that bases may be transferred, either with or without the sale of cattle, under the following conditions:

- (1) When the entire base is sold or transferred to a single producer; or

- (2) When a minimum of 100 pounds of daily base is sold or transferred to a single producer; provided that when a producer's remaining base reaches a level of less than 100 pounds, such base shall then be considered his base and may be sold as a single lot; or
- (3) When a base is held jointly and such joint holding is terminated, the entire base may be transferred or divided between the joint holders according to the ownership of the base;
- (4) A base established by a new producer as provided for in these rules shall not be transferable under the conditions set forth in this Rule until the producer has been an active shipper for 36 consecutive months from the time such producer began the establishment of the base except in the event of total disability or death of the base holder. Should a producer who has established base under this provision discontinue shipping prior to being active for 36 months, then the base for such producer shall expire;
- (5) In all cases of transfer of any base, the owner of the base and the person acquiring base must certify to the commission as to the transaction no later than 15 days following the effective date of the transfer;
- (6) All such transfers shall be made in the following manner:
 - (A) Transfer Dates. Bases sold shall be transferred effective the first day of the month following the month in which a transaction occurs. (For example, if a transaction occurs on the 1st day, the 10th or 30th or 31st of a month, the effective date of transfer will be the first of the following month.)
 - (B) Transfer of Base History. Base history shall be transferred in the same proportion as the "base in use" is transferred.
 - (C) Transfer of Production Credits. A producer who purchases base shall be entitled to his comparable part of the seller's production during the base building period and production credits will be transferred in the same proportion as the "base in use" is transferred;
- (7) Retention of or Loss of Base. A producer who has an established base, which is eligible for transfer, shall be entitled to retain such base for a period of 18 months commencing on the first day of the month following the month during which the producer discontinues delivering milk to a Grade A milk plant

subject to the provisions as outlined in this Subsection.

If the base is transferred during this 18-month period, for base computation purposes a base history will be created equal to the base in effect without regard as to whether the deliveries of the seller are above or below the base in effect subject to the following:

During the first six months of the 18-month period the full base and the history created under this Paragraph may be transferred. Commencing with the seventh month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by five percent. Commencing with the 13th month a base is retained the base held and the base history created at the time such producer became inactive will be reduced by an additional five percent for a total reduction of 10 percent.

Should a producer fail to transfer his base within the allotted time, then such base shall become null and void. Any producer who has ceased to ship Grade A milk since December 1, 1973, shall be eligible to transfer base under the provisions of this Paragraph. The stipulations outlined above shall be applicable to any producer now holding inactive base and such producer shall have 18 months from the time such producer quit producing Grade A milk to transfer base under the provisions of this Subsection.

The provisions of this Subsection shall be applicable only to a producer who discontinues the shipment of milk to a Grade A milk plant and shall not be applicable to a producer who transfers a part of his base and remains as an active shipper.

Any base and base history transferred under the provisions of the previous inactive base rules shall not be adjusted in accordance with this revised Subsection;

- (8) Exception. The provisions outlined in (e) of this Rule shall apply to all producers except where modified by the provisions of a special base plan approved by the commission.

(f) Base Hardships. Effective with the computation of bases which take effect on and after January 1, 1972, producers experiencing a loss in base may receive relief as provided or may petition for special consideration based upon the provisions as specified.

- (1) A producer who experiences a loss in production during the base building period shall not have his base reduced by more than 10 percent the first year such producer experiences a loss in base, provided the second consecutive year such a loss is experienced this provision shall not apply. When a producer has had his base calculated according to this provision, such producer is then eligible to have his base calculated in accordance with this provision again.

Further, this provision shall apply to all base plans now in effect, provided there is no provision to rebuild the base loss except as may be provided in plans now in effect.

- (2) When a producer, whose base is established on a three-year moving average, has his current base computed under the provisions of (f) (1) of this Rule there shall be no adjustment in the base history for prior years.
- (3) Special request for base adjustment may be made direct to the Milk Commission whether such loss is above or below 10 percent based upon the following circumstances:
- (A) acts of nature beyond the control of operator such as lightning, floods, drought, loss of cattle due to weather storm, power failure, electrocution, rabies, epidemic disease of unusual occurrence, fire, etc.;
 - (B) death or serious illness of the owner-operator, or a member of the owner-operator's family whose service is essential in the dairy operation;
 - (C) induction into the armed services of a member of the owner-operator's family whose service is essential in the dairy operation.
- (4) Special request for base adjustments will not be considered for errors of judgment in management and the normal hazards of dairy farming.
- (5) In the consideration of any special request for base adjustment, the commission may at its discretion refer such request to a producer committee of the plant to which the petitioner ships with the request that such committee review the petition for adjustment and make a recommendation to the commission. Such requests may be referred to the executive committee of an existing producer organization or may be referred to a special committee appointed for such purpose.

History Note; Filed as an Emergency Regulation Eff. June 8, 1976, for a Period of 120 Days;

Statutory Authority G.S. 106-266.8(3), (7);
Eff. February 1, 1976.

.0511 PLANT RECORDS AND REPORTS

(a) Books and Records to be Maintained. Each distributor shall at all times keep such "Books and Records" as will enable the commission or its designated representative to determine accurately all receipts, sales, transfers, production, and bottling records, use and disposition of all milk and milk products in accordance with the authority vested in said commission. These records shall include detailed producer payroll records showing total producer receipts, butterfat test, classification, and payment by classes, gross amount, all deductions, and charges and net payment, and a copy of computations used in arriving at classes and allocations of classes to producers. These records shall show the source and quantity of all other milk, cream, condensed or powdered milk. The sales records must include the sales by units, the value of each group of units, showing retail and wholesale sales by daily transactions, summarized into a monthly total. A detailed record shall show all transfers of bottled or bulk products sold to other distributors or buyers.

(b) Reports to be Filed. Each distributor shall furnish to the commission not later than the 18th day of each month on forms furnished by the commission a detailed record showing the total receipts of milk from producers and other sources, all sales, transfers, use and disposition of milk handled in the previous month. Such reports shall show the receipts by classes, butterfat differentials, total dollars paid to each producer and total quantity of dairy products manufactured. This report shall include a complete accounting for all milk received from producers and other sources each month. The information reported must be compiled from records of a permanent nature and kept on file by the distributor.

(c) Inspection of Records. The procedure regarding the production of records by milk distributors for examination by representatives of the Commission is as follows:

- (1) All licensees will be notified of the names of Milk Commission auditors and investigators authorized to examine distributor's records.
- (2) Each licensee shall notify the Milk Commission of the persons at each location having custody of and authorization to provide all records to representatives of the Milk Commission. These persons must be normally available since no prior notice of the investigation will be given.
- (3) All records shall be made available for the representative's examination upon his request. Such records may include, but are not restricted to, the profit and loss or operating statement, ledgers, and

supporting information such as invoices, vouchers, and any other records or documents necessary to verify entries made in the distributor's profit and loss or operating statement.

- (4) Representatives will maintain the confidentiality of all records examined. Information which is not related to the purpose of the investigation or examination will not be recorded, nor will any information which might reflect the profit or loss or financial condition of a plant or company be copied.
- (5) When the profit and loss or operating statement is examined, the Milk Commission representatives, prior to the examination of the statement, will select at least two expense categories in each month or accounting period which may be blocked out along with the net profit figure for such month or accounting period, in order that the net profit or loss for such month or accounting period may not be ascertained in later computations. The accounts approved for blocking out may vary from month to month at the discretion of the representatives.
- (6) The custodian of the records may be present when the profit and loss or operating statement is being examined.

History Note: Statutory Authority G.S. 106-266.8(5), (7),
(12), (14);
Eff. February 1, 1976.

.0512 ASSESSMENT

(a) For the purpose of defraying the expenses of the Milk Commission there is hereby levied an assessment of one and one-half cents ($1\frac{1}{2}\%$) per hundredweight on all milk handled from all sources by the distributor and one and one-half cents ($1\frac{1}{2}\%$) per hundredweight on all milk sold by producers. Each distributor shall pay the assessment levied on him and shall deduct from producer payments the assessment of one and one-half cents ($1\frac{1}{2}\%$) per hundredweight on all producer milk and pay all such assessments to the Milk Commission.

(b) The distributor assessments on all milk sold or transferred to other distributors where both the shipping and receiving distributor are located in an established marketing area shall be paid by the first distributor. Milk received by a distributor from sources where no assessment by the Milk Commission is in effect shall be included in such distributor assessment.

(c) All assessments shall be paid to the Milk Commission not later than the 18th day of each month following the delivery period and shall be deposited immediately in the designated State Depository to the Treasurer of North Carolina for credit to the "Milk Commission Account."

History Note: Statutory Authority G.S. 106-266.8(7);
106-266.11; 106-266.12;
Eff. February 1, 1976.

.0513 EXEMPTION

The provisions of the milk marketing regulation shall not apply to a distributor or a producer-distributor as defined in the Milk Commission Act who sells no more than 25 gallons of milk per day, all of which is produced on his own farm.

History Note: Statutory Authority G.S. 106-266.6(4);
106-266.8(7);
Eff. February 1, 1976.

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